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Statutes of Repose: Protection for Manufacturers and Material Suppliers

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Most states have adopted Statutes of Repose to protect architects, engineers and constructors of improvements to real property from lawsuits arising after a specific number of years after completion of an improvement to real property. These Statutes of Repose differ from Statues of Limitation in that a statute of repose can bar claims before they have arisen, while a statute of limitation bars claims after they have arisen. The extent to which a statute of repose protects manufacturers and material suppliers varies greatly among the states. State courts have developed two theories to determine if a particular manufacturer or material provider is protected: the improvement analysis and the activity analysis. The activity analysis is superior. The improvement analysis extends protection to products that are defined as "improvements" but not to products that might be component parts or material. The activity analysis extends protection to those entities that incorporate their products into the real property. All states should adopt an activity analysis. All states should extend the protection of the statute of repose to entities which install their product into/onto real property improvements or who custom-make or design products for installation into/onto real property improvements.

Key Words: Repose, Activity Analysis, Improvement Analysis, Limitations of Actions

Introduction

This paper is an overview of the extent state statutes of repose protects manufacturers and material suppliers to the construction industry from injury claims. This paper cannot be taken as legal advice on the law in any particular state and should the reader have a specific legal problem in any way similar to any matter discussed herein, the reader should consult an attorney.

Thirty-eight states presently have enforceable Statutes of Repose to limit the liability of architects, engineers and contractors for all injury claims, including product liability claims arising out of construction projects. See Appendix A for a list of each states statute, if any, and whether or not is has withstood constitutional attack. If the court has not upheld the constitutionality of a statute, the statute has no force or effect in the state. As a general rule, statutes of repose apply ONLY to the construction industry, however, New York statutes of repose are not specifically aimed at the construction industry. Some states, for example, North Carolina and Colorado have statutes of repose for general product liability claims, and many states are also looking into passing similar statutes to limit product liability claims.

A statute of repose differs from a statue of limitation. A statute of repose can bar claims before they have arisen, while a statute of limitation can only bar claims after they have arisen.

The extent to which statutes of repose protect manufacturers and material suppliers from claims varies widely depending on the state where the construction project is located. It is important for manufacturers of products to know to what extent they are protected from liability for lawsuits under these statutes. In some states heavy equipment installed in or on real property may be protected to the same extent that buildings and structures are.

In any lawsuit involving any type of material or product and construction, the parties should carefully review the applicable statute of repose and the case law to determine if the suit is barred. If a material provider or manufacturer can obtain protection under the statute of repose, the case against it will be dismissed. However, the states vary widely on the extent of protection afforded manufacturers and material providers and the law is not settled in each jurisdiction. Knowledge of how other states handle these types of lawsuits might be used to convince a court to extend or deny protection of the statute to a particular manufacturer or material provider.

Statutes of Repose vs. Statutes of Limitation

Forty-eight states have enacted statutes of repose to limit the liability of architects, engineers and contractors for claims arising out of construction projects. Eleven state courts have invalidated the statute on various state constitutional grounds. For example Kentucky held the five-year statute of repose violated the special legislation clause of its constitution. (*Tabler v. Wallace,* 704 S.W.2d 179 (Ky. 1985), cert.denied 479 U.S. 822, 107 S. Ct. 89, 93 L.Ed. 2d 41 (1986) South Carolina held its Statute to violate equal protection in *Broome v. Truluck*, 270 S.C. 227, 241 S.E.2d 739 (S.C. 1978).

Alaska has recently passed another statute of repose that has not yet been constitutionally tested. Other states may do the same. See Appendix A for a detailed list of state statutes of repose. The District of Columbia is also included.

Statutes of Repose prevent injured parties from recovering for damages suffered as the result of defective and/or unsafe conditions in an improvement to real property. The statutes prevent contractors from being sued. If a lawsuit is filed after the period provided in the law, it is relatively inexpensive for the contractor to have it dismissed without the need for expensive litigation and certainly, a trial will be avoided. The lengths of the statutes vary from five years (Ark. Stat. 16-56-112 (1987) Va. Code @ 8.01-250 (1995) to twenty years (Md. Cts. & Jud. Proc. Code @ 5-108 (Supp. 1991).

Some states refer to Statutes of Repose as "Statutes of Limitation". For example the California court in *Regents of University of Cal. v. Hartford Acci. & Indem. Co.*, (1978) 21 C.3d 624, 147 Cal.Rptr 486, 581 P.2d 197 said, "Code Civ. Proc., @ 337.15 is an ordinary procedural statute of limitations, subject to the same rules as other statutes of limitations". Other states have other names for the same type of statute. See Code of Ala. @ 6-5-218 (1994) which calls the statute a "Rule of Prescription".

A Texas court said in reference to Texas Civ. Prac. & Rem. Code "16.009 is not a statute of limitation, but rather an ultimate statute of repose that bars all claims after the prescribed 10-year period." *Tumminello v. U.S. Home Corp.* 801 S.W.2d 186 (Tex.App.-Houston 1990).

In this article "statute of repose" shall refer to any state statute which limits the period of filing a lawsuit from some event OTHER than an injury. In the case of Statutes of Repose the event is generally the completion or substantial completion of an improvement to real property. A typical statute of repose will allow lawsuits to be filed against constructors, architects, and engineers only up to a certain date after completion of the construction project. After the particular date all lawsuits are barred.

To fully understand a statute of repose it is necessary to compare it with a statute of limitations. For example, a typical statute of limitations requires suits for personal injuries be filed within two years of the date of injury. A lawsuit, for an injury, which occurs fifty years after the completion of a building, could still be filed against the architect, engineer or constructor, as long as the lawsuit is filed within two years of the date of injury. Statutes of Repose have been enacted to prevent just this type of lawsuit.

Statutes of Repose therefore can bar claims before they have arisen, while Statutes of Limitations can only bar claims sometime after they have arisen. The graph below illustrates the interaction between a two-year Statute of Limitation and an eight-year statute of repose.

Table 1

Statute of Repose compared to Statute of Limitation

Year 0	**Year 2**	**Year 4**	**Year 6**		**Year 8**
Construct. Completed	Claim #1 arises	*Claim #1 must be filed or barred by 2 year Statute of Limitations*	Year 7 arises	Claim #3	Claim #2 arises, but is barred by 8 year Statute of Repose

Claim #1 involves an injury that occurs in Year 2 after completion of construction. The injured party has two years, or until Year #4, to file a lawsuit. Claim #2 arises against the contractor eight years PLUS after completion of construction. Claim #2 is barred by the statute of repose, and was barred even before the claim arose. All claims against the contractor, architect, and engineer are barred after the eight anniversary of the construction project. The contractor can fairly easily have the claim dismissed.

Many, but not all Statutes of Repose extend the period to sue to that of the Statute of Limitations, if the claim arises prior to the statute of repose cut-off date. For example Claim #3 above, which arises seven years after completion, could be filed up until year nine in many states.

The Texas ten-year statute of repose is one such statute. The claimant has two years to file suit if injury occurs within ten years of completion of the project. California however does not extend protection, and a claim that arises on the last day of the running of the statute of repose will fail unless filed the next day. See *Liptak v Diane Apartments, Inc.*, (1980) 109 C.A.3d 762, 167 Cal.Rptr 440.

Contractors should therefore realize statutes of limitation provide a time frame after a claim arises during which they can be sued. Statutes of Repose provide a time frame after completion of a project during which the contractor can be sued. Once that period expires the contractor cannot be held liable for any injuries caused by the construction – all risk of injury passes to the owner.

Types of Entities Protected by Statutes of Repose

A comparison of statutes of repose across state lines reveals they protect architects, engineers and persons who construct real property improvements. However, a great difference has developed in the extent to which the state's statute of repose protects material suppliers and manufacturers who provide products incorporated in or attached to the real property.

North Carolina's statute specifically protects material providers, N.C. Gen. Stat. @ 1-50 (1994):

> "(5) a. No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.
>
> b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:
>
> 9. Actions against any person furnishing materials..." (emphasis added)

North Carolina statutes also protect manufacturers from product liability claims. This protection is not limited to the construction industry.(See *Lindsay v. Public Serv. Co*., 725 F. Supp. 278 (W.D.N.C. 1989).

Colorado statutes protect architects, contractors, builders or builder vendors, engineers, inspectors, manufacturers or sellers of products, and also manufacturers, sellers, or lessors of new manufacturing equipment. Colo. Rev. Stat. 13-80-104, 13-80-106, 13-80-107 (1995).

Virginia specifically *denies* protection to material providers as seen in Va. Code Ann. @ 8.01-250 (1995): "The limitation prescribed in this section shall not apply to the manufacturer or supplier of any equipment or machinery or other articles installed in a structure upon real property..."

Most states however are not as clear in stating who is protected and who is not. The statutes of repose merely say entities that construct improvements to real property are protected. However, the legislatures have not told the courts what an "improvement" is or what a "constructor of an improvement" is. It has been left to the courts to determine the extent of the protection.

For example California's Code of Civil Procedure @ 337.15 (1995) states:

> "(a) No action may be brought to recover damages from any person, or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement..."

Little, if any doubt existed in early litigation relating to statutes of repose, that engineers, and contractors are clearly protected by the statutes. However, it was not clear if material providers, suppliers, and manufacturers to the construction industry were protected. *Lamb v. Wedgewood S. Corp.*, 308 N.C. 419, 302 S.E.2d 868 (1983) and *Turner Constr. Co. v. Scales*, 752 P.2d 467 (Alaska 1988) (decided prior to the 1994 amendment). Because of the potential protection a statute of repose offers, manufacturers and material suppliers have aggressively sought protection through the courts when a statute, such as California's, is not clear. The extent to which manufacturers and material providers have been successful in convincing judges that the statutes apply to them varies.

Several states have developed case law holding that the statutes of repose do not apply to a manufacturer of building materials used in an improvement to real property. Designers, manufacturers and installers of asbestos-containing materials have been major litigators in the battle to extend protection of a statute of repose to material suppliers in general, and themselves in particular. They have not been successful in doing so. See *Hebron Pub. Sch. Dist. No. 13 v. United States Gypsum Co.*, 475 N.W.2d 120 (N.D. 1991) and *Corbally v. W.R. Grace & Co.*, 993 F.2d 492 (5th Cir.) (This author has not reviewed every case involving asbestos related material - some litigation might have been successful).

The Illinois statute of repose protects professionals who design, plan, supervise, observe or manage the construction of a building, or actually construct an improvement to real property. The defendant's role in manufacturing and supplying fireproofing material did not fall within any of the activities specifically enumerated in the statute, and therefore, the Defendant was not afforded the protection of the statute of repose. *Landry v. Keene Corp.*, 811 F. Supp. 367 (N.D. Ill. 1993).

In the event a contractor or specialty subcontractor is involved in an injury lawsuit, these parties should understand the extent of the protection provided them by their jurisdiction's statute of repose. A contractor has little, if any, liability for injuries relating to construction project once the statute of repose has run. Specialty subcontractors, manufacturers and material providers however may continue to be liable.

Improvement Analysis

Many states have developed an "improvement analysis" approach to determine whether or not the statute of repose protects a defendant. This requires the courts to develop different categories into which products and materials can be placed. Products placed in the "improvement" category are protected, products in other categories are not.

The definition of improvement vs. fixture; trade fixture; component part; and/or material, has historically given courts trouble and produced inconsistent results. It continues to do so.

If the defendant can convince the court its product is an "improvement" to real property, the defendant can be protected. The definition of improvement has become very broad in recent years due to statute of repose litigation. A Texas court stated that the term "improvement" includes fixtures, "all betterments to the freehold", and "everything that permanently enhances the value of the premises", but does not include material or component parts. *See Dubin v. Carrier Corp.*, 731 S.W.2d 651 (Tex.App.-Houston 1987 no writ) and *Rodarte v. Carrier Corp.*, 786 S.W.2d 94 (Tex.App.-El Paso 1990).

In Michigan, a "stack calendar" and a two-story, block-long papermaking machine (of which the stack calendar was an essential component) were determined to be improvements to real property, and therefor subject to the protection of the statute of repose. The court held the statute of repose prevented the plaintiff from seeking monetary relief for injuries from the manufacturer of the stack calendar.

The court looked at several factors to determine that the stack calendar and the papermaking machine were improvements to real property. These factors included: the value added to the property; the integral nature of the component and the machine; the permanency of placement of the stack calendar and paper-making machine; and their relationship to business occupants and the land. These factors meant that the stack calendar and the papermaking machine were an "improvement to real property" entitling the maker of the stack to protection of the statutes of repose. Plaintiff's claims for injury arising after the running of the statute (six years in this case) were dismissed. *Matthews v Beloit Corp.*, 807 F. Supp 1289 (1993) (in reference to MSA @ 27A.5805).

In Washington the court stated that the construction and installation of an escalator constituted an improvement upon real property. The six-year statute of repose barred a product liability claim arising more than six years after installation of the escalator. *Highsmith v. J.C. Penny & Co.*, 39 Wash. App. 57, 691 P.2d 976 (1984)(Statute of Repose referred to as a statute of limitation in that state). Underground power lines are improvements to real property within the meaning of this section. *Washington Natural Gas Co. v. Tyee Constr. Co.*, 26 Wash. App. 235, 611 P.2d 1378, review denied, 94 Wash. 2d 1011 (1980). A court in Washington stated that the term "improvement on real property" as used in many Statutes of Repose is frequently broader than the term "fixture." *Pinneo v. Stevens Pass, Inc.*, 14 Wash. App. 848, 545 P.2d 1207, review denied, 87 Wash. 2d 1006 (1976).

Therefore, under an "improvement analysis" a manufacturer may or may not be protected, depending on its ability to characterize its product as an improvement. This test has been difficult to apply in the area of real estate law, and continues to be difficult to apply in the area of statute of repose litigation. This test produces inconsistent results. It also is difficult to predict how a court will rule, unless you apply the "follow the money" test. The court is likely to rule in favor of the side with the most money. This is not because of fraud or graft, but because of ability to hire convincing attorneys. The cost of litigation in jurisdictions using this test can be expected to be higher and also more time-consuming.

Activity/Annexation Analysis

Rather than adopt the difficult-to-apply improvement analysis, many states have adopted an "activity analysis" or "annexation analysis". This type of analysis differs in its fundamental focus from an improvement analysis. The improvement analysis focus on a *description of the product* as an improvement, component part, material or whatever other categories have been recognized by the particular court. On the other hand, an activity analysis focuses on the *work done by the entity* seeking protection of the statute. Entities, which engage in substantial and/or significant activities in installing or incorporating their product into/onto the real property, are protected. *Sonnier v. Chisholm-Ryder Co.,Inc.,* 909 S.W.2d 475 (Tex. 1995)(denying protection to a manufacturer of a commercial tomato chopper because it did not annex the product to the realty, even though the product was an improvement). Entities that provide standard products, generally available to the public are not protected. *People v. Asbestospray Corp*., 247 Ill. App. 3d 258, 186 Ill. Dec. 462, 616 N.E.2d 652 (4 Dist.), appeal denied, 152 Ill. 2d 564, 190 Ill. Dec. 895, 622 N.E.2d 1212 (1993).

In addition to being in conformity with the purpose of the statute of repose, an activity analysis is easier to apply, offers more consistent results, and offers greater predictability in the law. The activity analysis provides protection to fewer entities than the improvement analysis. The entities not protected by the activity analysis, but who may be under the improvement analysis are wealthy manufacturers of standard products and/or equipment.

Some courts have gone a step further and extended protection of the statute of repose to manufacturers who custom-make products away from the construction site. These products must be specifically manufactured for a particular project and then installed by the manufacturer to receive protection. *Herriott v. Allied-Signal, Inc.,* 801 F. Supp. 52 (N.D. Ill. 1992), aff'd, 998 F.2d 487 (7th Cir. 1993).

Missouri has gone a step further and extended protection of its statute to a manufacturer of custom-made products for a particular construction job, even if it does not itself incorporate the product into the realty. Planning and designing a custom-made product intended to meet the special needs of a particular construction project falls within the protection of the statute. *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822 (Mo. 1991).

The test outlined by the court in the Blaske case offers the broadest protection to manufacturers, and still is in conformity with the purpose of a statute of repose. This test should be adopted by every state. The purpose of the statutes of repose is to protect designers and builders of improvements to real property, because each construction project is unique. "No two pieces of real estate are identical, and each presents its own unique problems and solutions. There is no such thing as a mass-produced improvement to real property." *Freezer Storage, Inc. v. Armstrong Cork Co.*, 476 Pa. 270, 382 A.2d 715, 719, (Pa. 1978).

In summary, given the present state of the law in many jurisdictions, a manufacturer of standard products, such as air conditioners, will not be protected by the statute of repose, unless it actually installs the product into the construction. A manufacturer of specialty or custom-made components incorporated into a construction project will not be protected unless it installs the

component, or performs some role related to the actual construction site. The better rule would be the Blaske rule, which gives protection of the statute of repose to manufacturers of specialty or custom-made components incorporated into a construction project, whether or not the manufacturer installed the component.

Conclusion

Statutes of limitation prevent lawsuit from being filed sometime after a claim arises. Statutes of Repose prevent lawsuits from being filed sometime after the completion date of a construction project. Statutes of Repose traditionally protect contractors, architects and engineers. The extent to which they protect manufacturers and material suppliers to the construction industry varies with the jurisdiction.

The purpose of a statute of repose is to protect designers and builders of improvements to real property from claims because of the unique problems associated with construction. Designers and builders of real property improvements are unable to mass-produce their products or to pre-test them. In addition, each real property improvement is unique, and not subject to standardization and testing that can eliminate injuries.

Two differing theories have developed in the case law to determine whether or not a manufacturer or material supplier is protected by a statute of repose: the improvement analysis and the activity analysis.

The improvement analysis focuses on the product, or item installed on the property. If the product is determined to be an improvement, the manufacturer or material provider is protected. The definition of “improvement” has proved to be a difficult one for the courts, and consistency and predictability are missing from the law. The results of the lawsuits applying the improvement analysis are not always in conformity with the purpose of the statute of repose.

In contrast to the improvement analysis, several courts have developed the activity analysis. Courts adopting this theory extend protection of the statute of repose to those manufacturers and material providers who engage in substantial on-site construction related activity.

An activity analysis may protect a fewer numbers of entities than the improvement analysis. However, the activity analysis is more consistent with the purpose of a statute of repose – to protect persons actually involved in the construction activity. The statutes of repose are designed to protect the construction industry, not the manufacturing industry. If state legislatures wish to protect equipment manufacturers they can, and many have. Courts should not extend protection to these entities merely because their products may be labeled "improvements".

One state, Missouri, has extended protection of its statute of repose to the fullest extent, while still being in conformity with the purpose of the statute. Manufacturers who install products into/onto realty are protected; in addition manufacturers who custom-make products incorporated into real property are also protected. All states which have a statute of repose should employ the activity analysis as adopted by Missouri.

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Tex. Civ. Prac. & Rem. Code § 16.009

Va. Code @ 8.01-250 (1984)

Va. Code Ann. @ 8.01-250 (1995)

Appendix A

Statutes and Constitutionality Status of State Statutes of Repose
(For reference only. Be sure to check your particular state for latest law.)

Alabama: Statute declared unconstitutional in: *Jackson v. Mannesmann Demag Corp*., 435 So. 2d 725 (Ala. 1983) (holding that the statute of repose violates open courts provision).

Alaska: Statute declared unconstitutional in: *Turner Construction Company, Inc. v. Scales*, 752 P.2d 467 (Alaska 1988) (finding statute violates equal protection because it classifies design professionals). See new statute not yet attacked: Alaska Code 09.10.140 (1995).

Arizona: Ariz. Rev. Stat. @ 12-552 (Supp. 1991) (eight years); NO CONSTITUTIONAL ATTACK YET.

Arkansas: Ark. Stat. @ 16-56-112 (1987) (five years), constitutionality of predecessor, Ark. Stat. @ 37-238, upheld in *Carter v. Hartenstein*, 248 Ark. 1172, 455 S.W.2d 918 (Ark. 1970).

California: Cal. Civ. Proc. Code @ 337.15 (1982) (ten years), constitutionality upheld in *Barnhouse v. City of Pin*ole, 133 Cal. App. 3d 171, 183 Cal. Rptr. 881 (1982).

Colorado: Colo. Rev. Stat. @ 13-80-127 (1987) (six years), constitutionality upheld in <=5> *Yarbro v. Hilton Hotels Corporation*, 655 P.2d. 822 (Colo. 1982); Statute of Repose now found in Rev. Stat. @ 13-80-104 (1995).

Connecticut: Conn. Gen. Stat. Rev. @ 52-584a (1991) (seven years), constitutionality upheld in *Zapata v. Burns*, 207 Conn. 496, 542 A.2d 700 (1988).

Delaware: Del. Code tit. 10, @ 8127 (1974) (six years), constitutionality upheld *in Cheswold Volunteer Fire Company v. Lambertson Construction Comp*any, 489 A.2d 413 (Del. 1984).

District of Columbia: D.C. Code @ 12-310 (1989) (ten years), constitutionality upheld *in Britt v. Schindler Elevator Corporation*, 637 F.Supp 734 (D.D.C. 1986).

Florida: Statute declared unconstitutional. *Overland Construction Company, Inc. v. Sirmons*, 369 So. 2d 572 (Fla. 1979) (stating that the statute violates access to the courts).

Georgia: Ga. Code @ 9-3-51 (1982) (eight years), constitutionality upheld in Mullis v. Southern Company Services, Inc., 250 Ga. 90, 296 S.E.2d 579 (1982).

Hawaii: Statute declared unconstitutional in: *Fujioka v. Kam*, 55 Hawaii 7, 514 P.2d 568 (1973) (finding a violation of equal protection).

Idaho: Idaho Code @ 5-241 (1990) (six years), constitutionality upheld *in Twin Falls Clinic & Hospital Building Corporation v. Hamill*, 103 Idaho 19, 644 P.2d 341 (1982).

Illinois: Ill. Rev. Stat. ch. 110, para. 13-214(b) (Supp. 1991) (ten years), constitutionality upheld in *Cross v. Ainsworth Seed Co*., 199 Ill. App. 3d 910, 145 Ill. Dec. 927, 557 N.E.2d 906 (1990), but see *Skinner v. Anderson*, 38 Ill. 2d 455, 231 N.E.2d 588 (1967), which held a predecessor statute unconstitutional on special legislation grounds.

Indiana: Ind. Code @ 34-4-20-2 (1968) (twelve years), constitutionality upheld *in Beecher v. White*, 447 N.E.2d 622 (Ind. 1983).

Iowa: Iowa does not appear to have statutes of repose.

Kansas: Kansas has statutes of repose, but they are not specifically for architects and builders for improvements to real property.

Kentucky: Statute declared unconstitutional in: *Tabler v. Wallace*, 704 S.W.2d 179 (Ky. 1985), cert.denied, 479 U.S. 822, 107 S. Ct. 89, 93 L.Ed. 2d 41 (1986) (holding that the five year statute of repose violated special legislation clause).

Louisiana: La. Rev. Stat. @ 9:2772 (1991) constitutionality upheld *in Burmaster v. Gravity Drainage District No. 2*, 366 So. 2d 1381 (La. 1978). (10 year statute).

Maine: Maine Rev. Stat. @ 14-752-A (1980) (actions must be brought against design professionals four years after malpractice or negligence occurs but not more than ten years after substantial completion of services provided); NO CONSTITUTIONAL ATTACK YET

Maryland: Md. Cts. & Jud. Proc. Code @ 5-108 (Supp. 1991) (twenty years after the date the entire improvement first becomes available for its intended use, or ten years in an action against architects, professional engineers, or contractors), constitutionality upheld *in Whiting-Turner Contracting Company v. Coupard*, 499 A.2d 178 (Md. 1985).

Massachusetts: Mass. Gen. L. ch. 260, @ 2B (Supp. 1991) (six years after the earlier of the opening of the improvement to use or substantial completion of the improvement & taking of possession for occupancy by the owner), constitutionality upheld in *Klein v. Catalano*, 386 Mass. 701, 437 N.E.2d 514 (1982).

Michigan: Mich. Comp. Laws @ 600.5839(1) (1987) (six years after time of occupancy of completed improvement, use, or acceptance of the improvement, or one year after defect is discovered or should have been discovered; however, no action can be maintained ten years after the time of occupancy of the completed improvement, use, or acceptance of the improvement), constitutionality upheld in *O'Brien v. Hazelet & Erda*l, 410 Mich. 1, 299 N.W.2d 336 (1980).

Minnesota: Minn. Stat. @ 541.051 (Supp. 1991) (ten years), constitutionality upheld in *Calder v. City of Crystal*, 318 N.W.2d 838 (Minn. 1982).

Mississippi: Miss. Code @ 15-1-41 (Supp. 1991) (six years), constitutionality upheld *in Reich v. Jesco, Inc*., 526 So.2d 550 (Miss. 1988).

Montana: Mont. Rev. Code @ 27-2-208 (1991) (ten years), constitutionality of predecessor, Mont. Rev. Code @ 93-2619, upheld in *Reeves v. Ille Electric Company*, 551 P.2d 647 (Mont. 1976).

Nebraska: Neb. Rev. Stat. @ 25-223 (1989) (ten years beyond time of act giving rise to the cause of action), constitutionality upheld in *Williams v. Kingery Construction Company*, 225 Neb. 235, 404 N.W.2d 32 (1987); Nev. Rev. Stat. @ 11.204 (1991) (eight years), constitutionality upheld in *Wise v. Bechtel Corporation*, 104 Nev. 750, 766 P.2d 1317 (Nev. 1988).

New Hampshire: Statute declared unconstitutional in*: Henderson Clay Products, Inc. v. Edgar Wood & Associates, Inc*., 122 N.H. 800, 451 A.2d 174 (1982) (holding the statute of repose unconstitutionally discriminatory).

New Jersey: N.J. Rev. Stat. @ 2A: 14-1.1 (1987) (ten years), constitutionality upheld in *Rosenberg v. Town of North Bergen*, 61 N.J. 190, 293 A.2d 662 (1972).

New Mexico: N.M. Stat. @ 37-1-27 (1990) (ten years), constitutionality upheld *in Terry v. New Mexico Hwy. Comm'n*, 98 N.M. 119, 645 P.2d 1375 (1982).

New York: New York has statutes of repose, but they are not specifically for architects and builders for improvements to real property.

North Carolina: N.C. Gen. Stat. @ 1-50(5) (Supp. 1991) (six years), constitutionality upheld in *Lamb v. Wedgewood South Corporation*, 308 N.C. 419, 302 S.E.2d 868 (N.C. 1983).

North Dakota: N.D. Cent. Code @ 28-01-44 (1991) (ten years), constitutionality upheld in *Bellemare v. Gateway Builders, Inc*., 420 N.W.2d 733 (N.D. 1988).

Ohio: Ohio Rev. Code @ 2305.131 (1990) (ten years), constitutionality upheld *in Sedar v. Knowlton Construction Company*, 49 Ohio St. 3d 193, 551 N.E.2d 938 (1990).

Oklahoma: Okla. Stat. tit. 12, @ 109 (1988) (ten years), constitutionality upheld *in St. Paul Fire & Marine Insurance Company v. Getty Oil Company*, 782 P.2d 915 (Okla. 1989).

Oregon: Ore. Rev. Stat. @ 12.115 (1988) ("In no event shall any action for negligent injury to person or property of another be commenced more than ten years from the date of the act or omission complained of."), constitutionality upheld in *Josephs v. Burns*, 260 Ore. 493, 491 P.2d 203 (Ore. 1971).

Pennsylvania: Pa. Stat. tit. 42, @ 5536 (1981) (ten years) constitutionality of predecessor, Pa. Stat. tit. 12, @ 65.1, upheld in *Freezer Storage, Inc. v. Armstrong Cork Company*, 476 Pa. 270, 382 A.2d 715 (Pa. 1978).

Rhode Island: R.I. Gen. Laws @ 9-1-29 (1985) (ten years), constitutionality upheld *in Leeper v. Hillier Group, Architects Planners, P.A.*, 543 A.2d 258 (R.I. 1988).

South Carolina: Statute declared unconstitutional in: *Broome v. Truluck*, 270 S.C. 227, 241 S.E.2d 739 (S.C. 1978) (stating that the statute violates equal protection).

South Dakota: Constitutionality not upheld in*: Daugaard v. Baltic*, 349 N.W.2d 419 (S.D. 1984) (finding the statute to violate open courts provision).

Tennessee: Tenn. Code Ann. @ 28-3-202 (1980) (four years), constitutionality upheld in *Harmon v. Angus R. Jessup Associates, Inc*., 619 S.W.2d 522 (Tenn. 1981).

Texas: Tex. Civ. Prac. and Rem. Code @ 16.008 (1986) (ten years), constitutionality upheld in *Suburban Homes v. Austin-Northwest Development Company,* 734 S.W.2d 89 (Tex.App. 1987).

Utah: Statute declared unconstitutional in: *Horton v. Goldminer's Daughter,* 785 P.2d 1087 (Utah 1989) (holding the statute violates open courts provision).

Virginia: Va. Code @ 8.01-250 (1984) (five years), constitutionality upheld *in Hess v. Snyder Hunt Corporation,* 240 Va. 49, 392 S.E.2d 817 (Va. 1990).

Vermont: Does not appear to have statutes of limitations.

Washington: Wash. Rev. Code @ 4.16.310 (1988) (six years), constitutionality upheld in *Yakima Fruit & Cold Storage Co. v. Central Heating & Plumbing Co*., 81 Wash. 2d 528, 503 P.2d 108 (1972).

West Virginia: W.Va. Code @ 55-2-6a (Supp. 1991) (ten years). NO CONSTITUTIONAL ATTACK YET.

Wisconsin: Statute declared unconstitutional in: *Funk v. Wollin Silo & Equipment, Inc*., 148 Wis.2d 59, 435 N.W.2d 244 (Wis. 1989) (finding that the six year statute of repose violates equal protection).

Wyoming: Statute declared unconstitutional in: *Phillips v. ABC Builders, Inc*., 611 P.2d 821 (Wyo. 1980) (holding that the statute of repose violates open courts, equal protection, and special laws clauses).